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WE have received the following interesting communication upon the subject of conditional pardons, which has been kindly sent us by ex-Governor Hoadly, of Ohio:—

“In the number of the HARVARD LAW REVIEW for November, 1888, just received, I notice, upon page 181, a note with regard to the grant of conditional pardons, which induces me to write you to say that, for many years, at least since 1869, it has been provided by law in Ohio that pardons or commutations may be granted ‘on such terms as the Governor deems proper to impose.’ (66 Ohio Laws, 287, section 214.)

“By an amendment to this act, passed in 1882 (79 Ohio Laws, 122, 3 Williams Revised Statutes, 11), now numbered as section 89A of the Revised Statutes of Ohio, it was provided that ‘a violation of the conditions of the pardon shall be held to be a forfeiture of the pardon, and shall render the person pardoned liable to be recommitted to the penitentiary, there to serve the remainder of his sentence as though he had not been pardoned.’

“The residue of the section provides for the method of procedure in such cases, which is, in substance, this: That the governor requests, in writing, the prosecuting attorney of the county, in any such case of violation, to file an information thereof in the office of the probate judge of said county, whereupon the judge issues a warrant to the sheriff, the sheriff arrests the prisoner, the question of violation is tried before the probate judge, and if the charge be sustained, the prisoner is returned to the warden of the penitentiary under a warrant from the probate judge to the sheriff.

“During my term of office as Governor of Ohio I was compelled twice to recapture persons whom I had pardoned, and they are now, or, at least, one of them is now in the Ohio penitentiary, serving the residue of his original sentence.

“These were both flagrant violations of the condition, accepted by the prisoner at the time of pardon, to abstain from the use of intoxicating liquors. This experience was very painful to me, and rendered me extremely doubtful whether this particular condition was wisely imposed. These doubts never left me, but I yielded during my whole term to the

argument of my friend and predecessor, Governor Foster, who claimed that this pledge would greatly assist a man to reform, would make it on his lips a valid excuse to avoid drinking if tempted. I am anything but sure about this, and have been greatly disturbed in mind by the failure of these two cases out of, say, twenty cases in which I tried the experiment.

"The importance of conditional pardons has been very much lessened in Ohio, however, by the adoption, in 1885, partly (I am happy to say) at my instance, of the English ticket-of-leave, or parole system. Any of your readers curious to follow the subject will find the Ohio law establishing the power of parole, and defining the method of its exercise, in 3 Williams Revised Statutes, p. 773, *et seq.* The parole system is in substance this: The directors of the penitentiary are authorized in the case of any convict who has served the *minimum* term, to which he might have been sentenced, it being his first term, to parole the prisoner for the unexpired residue of the term, that is to say, to let him go physically free. Theoretically, he is still in custody. If, at any time, it seems necessary or important, he may be recaptured and brought back at the instance of the directors upon a warrant issued by them to the warden.

"Practically, these paroles are freely granted to well-behaved prisoners whose friends provide employment for them, and in whose cases there seems to be assurance of a better life if they are allowed to mix once more with the community. They are required by the rules of the prison to report their whereabouts and prospects, monthly. They are not permitted to use intoxicating liquors in any way. The system has only been in force three years, but I believe that in the judgment of all who have been connected with penal administration in Ohio (and I know in my own), it is a very great success.

"It has diminished the labors of the governor and his associates (there is now an advisory pardon board in Ohio) very greatly, for the reason that in nine cases out of ten where pardon is solicited it is much more prudent to grant parole and test the ability of the prisoner to resist temptation, before delivering him entirely, or conditionally even, by the pardon or commutation from the effect of the sentence and its imputed guilt.

"This system of parole, being applicable only to first-term prisoners who have already served the *minimum* provided by law for the punishment of such crimes, leaves open to the governor and his board the use of the conditional sentence as a method of assisting the prisoner or the State, as the case may be, in all cases of life sentences, second and more term prisoners, and other prisoners who have not yet served the minimum.

"Practically, though not legally, the pardoning power in Ohio is now exercised only in one of these three classes of cases.

"While I am on this subject I may as well add that there is a curious case in the annals of Ohio jurisprudence upon the exercise of the power of commutation. Mrs. Sarah M. Victor, who was finally pardoned last year by the present governor of Ohio, Governor Foraker, was, in 1868, convicted of murder in the first degree, at Cleveland, Ohio. While under sentence of death, Governor Hayes commuted her punishment to imprisonment in the penitentiary for life. She was either really or professedly insane at this time, and not in condition to give

her consent to the commutation. In 1876, under the advice of counsel, who thought themselves astute, she refused to consent to the commutation, and sued out a writ of *habeas corpus*, but with a very different result from that which she or her counsel anticipated. Judge Bingham, of the Franklin Common Pleas (now Chief Justice of the Supreme Court of the District of Columbia), held that her consent was necessary to commutation, and that the imprisonment in the penitentiary was illegal, but that the result of these conclusions was, not that she should be discharged, but that she should be remanded to the sheriff for execution. From this she and her counsel took a writ of error to the Supreme Court, who held (31 Ohio St. 206) that her acceptance was not necessary to commutation. She was remanded to the penitentiary, and there remained until pardoned last year.

"Another curious question has arisen and been decided in Ohio upon the law of pardons, to wit, that an unconditional pardon is irrevocable although procured by fraud. (*Knapp v. Thomas*, 39 Ohio St. 377.)

"Oddly enough, although in this case Governor Foster attempted to revoke the pardon of the prisoner, who was recaptured and again imprisoned until discharged by *habeas corpus* issued in the case cited, the prisoner finally died from the consequences of the fraud itself, which consisted in eating soap to create emaciation, and give the idea that he was a dying man, upon which theory the pardon was granted.

"If you care to follow the subject of Ohio paroles further you will find, perhaps, some additional information in a pamphlet,¹ which I enclose herewith, being a copy of an address on the subject of pardons and commutations delivered by myself at the National Conference of Charities and Corrections, St. Paul, Minnesota, in July, 1886.

"Yours truly,

"GEO. HOADLY."

THE LAW SCHOOL.

LECTURE NOTE.

SLANDER. — CONDITIONAL PRIVILEGE. — (*From Mr. Schofield's Lectures.*) — A person making a false statement in good faith is protected when the communication has been made in the discharge of a duty, public or private, legal or moral, or in the conduct of his own business, in matters where his interest is concerned. To accuse a servant of misconduct, though in the presence of third parties,² to warn one's servants to avoid a person lately discharged from service,³ are excusable acts, because done in the conduct of one's affairs; while to give information when requested, or to volunteer it to protect a friend, is only to discharge a social duty.

Where the communication, being made solely in the interest of the person receiving it, has been volunteered, and no confidential relation existed at the time, the courts are inclined to say that, if made in good faith, in the absence of officiousness, the occasion was privileged. (*Adcock v. Marsh*, 8 Iredell, 369; *Odgers*, S. & L., 2d ed., 213.)

¹ The Pardoning Power. By George Hoadly. Reprinted from Proceedings of Thirteenth National Conference of Charities and Corrections, held at St. Paul, Minn., July, 1886.

² *Toogood v. Spyring*, 1 C., M. & R. 181.

³ *Somerville v. Hawkins*, 10 C. B. 583.